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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,021	02/10/2006	David R. Curry	03-1051-B	7384
20306 7590 07/01/2008 MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP 300 S. WACKER DRIVE 32ND FLOOR CHICAGO, IL 60606				
EXAMINER				
KAVANAUGH, JOHN T				
ART UNIT		PAPER NUMBER		
3728				
MAIL DATE		DELIVERY MODE		
07/01/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/568,021

**Applicant(s)**

CURRY, DAVID R.

**Examiner**

/Ted Kavanaugh/

**Art Unit**

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/86)  
Paper No(s)/Mail Date 2-10-2006, 5-19-2008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. Claims 5,7-11,17-20 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, "the breathable material" lacks proper antecedent basis and therefore the scope of the claim is not known.

In claim 1, applicant claims "an interchangeable upper portion" and the "article of footwear" is only functionally being claimed. However, throughout the claims (i.e. claims 5,7-11) the interchangeable upper portion is being defined with respect to the article of footwear and therefore the scope of the claims are not clear.

In claims 17 and 20, "the interchangeable upper portion" lacks proper antecedent basis and therefore the scope of the claim is not known.

In claim 19, "the one or more alignment means" lacks proper antecedent basis and therefore the scope of the claim is not known.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,2,6-10,12-16,19-21,23-25,27 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4958447 (DuPree).

DuFree teaches an interchangeable upper portion (50) comprising one or more releasable fasteners (68a,68b,72a,72b), for aligning the interchangeable upper portion to an article of footwear, one or more alignment means 68a,68b,72a,72b for aligning interchangeable upper portion on an article footwear prior to releasably fastening the interchangeable upper portion to an article of footwear.

4. Claims 1-4,6-17,19-27 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5544430 (Jacko).

Jacko teaches an interchangeable upper portion (20) comprising one or more releasable fasteners (26,48) for aligning the interchangeable upper portion to an article of footwear, one or more alignment means (26,48) for aligning interchangeable upper portion on an article footwear prior to releasably fastening the interchangeable upper portion to an article of footwear.

5. Claims 1-3,6-10,12-16,19-22,24-25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5109614 (Curry).

Curry teaches an interchangeable upper portion (14) comprising one or more releasable fasteners (18A,18B,30A,30B,18,30) for aligning the interchangeable upper portion to an article of footwear, one or more alignment means (18A,18B,30A,30B,18,30) for aligning interchangeable upper portion on an article footwear prior to releasably fastening the interchangeable upper portion to an article of footwear.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacko '430.

Jacko teaches footwear as claimed (see the rejection above for details) except for the fixed upper portion being made of breathable material. Jacko teaches that the cover for covering the upper portion of the shoe can be "porous to allow the fabric to breathe", col. 3, lines 62. Therefore, it would have been obvious to one of ordinary skill in the art to make the material of the upper also porous to allow the user's foot to breathe.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:

--"The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references."

--"A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section."

--Moreover, "The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments

**made to the disclosure. See MPEP 2163.06” MPEP 714.02. The “disclosure” includes the claims, the specification and the drawings.**

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571) 273-8300 (FORMAL FAXES ONLY). Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (571) 272-4556. The examiner can normally be reached from 6AM - 4PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (In United States OR CANADA) or 571-272-1000.

Art Unit: 3728

/Ted Kavanaugh/  
Primary Examiner  
Art Unit 3728

TK  
July 2, 2008